

UNITED STATES
v.
LESLIE R. GODWIN

IBLA 72-75

Decided December 4, 1972

Appeal from a decision (S-PL-31-3 (P.L. 167)) of Administrative Law Judge Graydon E. Holt holding that the United States has the right to manage the vegetative surface and other surface resources on a mining claim.

Affirmed.

Mining Claims: Hearings--Notice--Surface Resources Act: Generally

Only mining claimants who file the verified statement required by section 5(a) of the Act of July 23, 1955, are entitled to a notice of a hearing to determine rights to the surface resources of a mining claim.

Mining Claims: Hearings--Rules of Practice: Hearings

Allegations that a mining claimant could not appear at a hearing because of illness or prepare the claim for sampling because the Forest Service closed the forest due to fire damages are without merit where the claimant did not ask for a postponement before the hearing in accordance with the provisions of the Rules of Practice nor raise the issues until 10 months after the hearing.

APPEARANCES: Charles F. Lawrence, Esq., Office of the General Counsel, U.S. Department of Agriculture, San Francisco, California, for appellees; Wilbur E. Godwin, pro se, appellant.

OPINION BY MR. RITVO

Wilbur E. Godwin has appealed from a decision of Administrative Law Judge Graydon E. Holt dated July 28, 1971, holding the Four by Four mining claim located in Sections 3 and 4, T. 15 N., R. 12 E., M.D.M., Placer County, California, to be subject to the limitations

and restrictions of section 4 of the Surface Resources Act of July 23, 1955, 30 U.S.C. § 612 (1970). ^{1/}

A proceeding for the determination of surface rights on the claim was initiated on November 25, 1957, by the United States through the Forest Service pursuant to section 5 of that Act, 30 U.S.C. § 613 (1970). On February 19, 1958, Leslie R. Godwin filed a verified statement, as required by that section, claiming the right to the surface resources on the Four by Four mining claim. He named as other locators in the verified statement seven other "Godwins," including one Helen, but none of whom had a forename of "Wilbur". Notice of hearing for the determination of his rights was served on Leslie R. Godwin on August 24, 1970. A hearing was held on October 21, 1970, the only witness being Gerald E. Gould, a mining engineer, on behalf of the Forest Service. Leslie R. Godwin did not appear at the hearing. Subsequently, on July 28, 1971, the Judge rendered his decision declaring the mining claim "* * * subject to the limitation and restrictions specified in section 4 of the Act of July 23, 1955".

A timely appeal was made by Wilbur H. Godwin on August 26, 1971. In his appeal Wilbur says that he is the successor in interest to Leslie and Helen Godwin by purchase from Leslie on June 21, 1971. He alleges that other parties to the action were not properly notified, Leslie was unable to attend the hearing because of illness, and repair work on the claim, which would have made further testing possible, was prevented by an order of the Forest Service closing the forest because of fire danger.

As a successor in interest to Leslie Godwin, Wilbur Godwin has standing to appear in an appeal from the Judge's decision. Foster Mining and Engineering Company, 7 IBLA 299, 79 I.D. ____ (1972).

His allegation that the other parties affected were not legally notified is without merit. Leslie R. Godwin was the only one of the eight locators to file a verified statement. Any claimant under an unpatented mining claim who fails to file a verified statement within the time allowed waives his right, title, or interest in the claims contrary to or in conflict with the limitations and restrictions of section 4 of the Act, 30 U.S.C. § 613(b) (1970).

Thus Leslie R. Godwin was the only one of the co-locators entitled to receive notice of the hearing and he was properly notified.

^{1/} The title "Administrative Law Judge" replaced that of "Hearing Examiner" pursuant to an order of the Civil Service Commission. 37 F.R. 16787 (August 19, 1972).

The allegations of illness or lack of access are similarly without merit. Although the regulation, 43 CFR 4.452-3, provides for postponement of a hearing under certain conditions, Leslie R. Godwin did not request one, despite his having had two months notice of the hearing. These issues were not raised until the appeal, some ten months after the hearing.

The appellant has made no showing of error in the Judge's determination that there was not a discovery of a valuable mineral deposit in the claim.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Administrative Law Judge is affirmed.

Martin Ritvo, Member

We concur:

Edward W. Stuebing, Member

Joan B. Thompson, Member

